

Chapter 16

STREETS AND SIDEWALKS

Articles:

16-1 ENCROACHMENTS

Article 16-1

ENCROACHMENTS

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Section 16-1-1 Definitions

In this chapter unless the context otherwise requires:

- A. "Encroach" or "encroachment" means going over, upon or under or using any right-of-way or water course in such manner as to prevent, obstruct or interfere with its normal use, including but not limited to the performance of any of the following acts:
1. Dig up, break, excavate, tunnel, undermine or in any manner break up or disturb the surface of any right-of-way or water course.
 2. Erect or maintain any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, pipe, conduit, wire or other structure on, over or under the surface of any right-of-way or water course.
 3. Place or leave any rubbish, brush, earth or other material of any nature whatsoever in any right-of-way or water course.
 4. Construct, place, maintain on, over or under any right-of-way or water course any pipe, conduit, wire, cable or other fixture.
 5. Move or caused to be moved over the surface of any right-of-way, or over any bridge, viaduct

or other structure maintained by the town any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging such right-of-way, bridge, viaduct or other structure.

6. Lighting or building a fire in any right-of-way or water course.
 7. Construct, place, plant or maintain any structure, embankment, excavation, tree or other object adjacent to a right-of-way or water course which causes or will cause an encroachment.
 8. Apply paint or other marking materials to any pavement located in any right-of-way.
- B. "Permittee" means any person who proposes to do work or encroach upon a right-of-way or water course as herein defined and who has been issued a permit for such encroachment by the town.
- C. "Public street" means the full width of the right-of-way of any road, street, highway, lane or pedestrian walkway used by or for the general public, whether or not the road, street, highway, alley, lane or pedestrian right-of-way has been improved or accepted for maintenance by the town. "Public street" does not include streets and highways forming part of the state highway system.
- D. "Right-of-way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public or the town for street, highway, alley or pedestrian walkway purposes.
- E. "Water course" means a channel for the carrying of storm water, including both natural and artificial water courses which have been by deed, conveyance, agreement, easement, dedication, usage or process of law dedicated to the town or the general public for such purposes.
- F. "Urgent necessity" means damage to any pipe or conduit that poses an immediate threat to life, property, or loss of utility service, the repair of which may not be postponed until an encroachment permit is issued without injury to persons or substantial damage to such property.

Section 16-1-2 Permit Required

- A. It is unlawful for any person to encroach upon any right-of-way or water course as defined in Section 16-1-1 without obtaining an encroachment permit from the town engineer.
- B. Any construction or work undertaken prior to applying for and securing the required permit shall be immediately terminated upon orders of the town engineer until such permit is obtained.
- C. The placement of traffic control markings on pavements and curbs by the town and the marking of pavements, curbs and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and monuments in connection with surveying, construction and maintenance work may be done without a permit; however, all other pavement, curb and sidewalk markings require a permit unless otherwise excepted by this article.
- D. No permit is required for a continuing use or maintenance of encroachments lawfully installed by public utilities, for changes therein or thereto where such continuing use, maintenance, changes or

additions require no excavation of the right-of-way.

Section 16-1-3 Other Exceptions to Permit Requirements

A. Mailboxes:

1. No permit is required for the placement of mailboxes in the right-of-way provided such mailbox conforms to the requirements of this subsection.
2. All mailboxes shall be mounted thirty-six inches above grade.
3. The following sizes of mailboxes as authorized by the postal department are authorized to be installed in the town. All mailboxes shall be black or light pastel shade to blend in with the area.
 - a. 19 inch length, 6.5 inch width, 8.5 inch height.
 - b. 21 inch length, 8.8 inch width, 10.5 inch height.
 - c. 23.5 inch length, 11.5 inch width, 13.5 inch height.
4. The owner of a mailbox installed pursuant to this subsection shall hold harmless the town from any and all losses of any kind or description that may result from the mailbox being placed in the town right-of-way.
5. The mailbox shall be placed so as not to present a hazard to persons lawfully using the right-of-way. If, in the opinion of the town engineer, any such mailbox is potentially harmful to any public utility or other public improvement located in the right-of-way or constitutes a hazard to the public, the town engineer may order its removal.

B. Landscaping:

1. No permit is required of any owner or tenant of a single family or two family residential structure abutting any right-of-way, and any contractor employed by such owner or tenant to conduct the following activities in that portion of the right-of-way abutting the property and lying between the property line and the curb or traveled portion of the right-of-way:
 - a. Plant shrubs, grass or other decorative plants.
 - b. Place decomposed granite or other, similar decorative rock materials.
 - c. Place decorative lighting.
 - d. Trench to a depth not exceeding twelve inches provided such trenching does not involve cutting any curb, sidewalk or pavement.
2. All landscaping placed in the right-of-way pursuant to this subsection shall be placed in such a manner as not to present a hazard to the public. If, in the opinion of the town engineer, any such landscaping is potentially harmful to any public utility or other public improvement

located in the right-of-way or constitutes a hazard to the public, the town engineer may order its removal.

- C. No permit or fee is required in order to paint a house number on a curb.
- D. No permit or fee under this article is required for work in any right-of-way in connection with the construction or reconstruction or alteration of any single family or two family residential structure provided a building permit has been issued by the town for such construction, reconstruction or alteration and the work in the right-of-way does not involve the cutting or construction of any curb, sidewalk or pavement.
- E. No permit or fee is required for properly permitted participants of the Adopt-A-Street program.

Section 16-1-4 Application for Permit

- A. The town engineer shall prescribe and provide a regular form of application for the use of applicants for permits required by this article. The application shall show such information and details as the town engineer deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed encroachment.
- B. When required by the town engineer, the application shall be accompanied by maps, sketches, diagrams or similar exhibits. The same shall be of the size and in the quantity prescribed by the town engineer and of sufficient clarity to illustrate the location, dimensions, nature and purpose of the proposed encroachment and its relation to existing and proposed facilities in the right-of-way or water course.
- C. The applicant shall enclose with, or attach to, the application the written order or consent to any work thereunder which may be required by law to be obtained. A permit shall not be issued until such order of consent is first obtained and evidence thereof is supplied to the town.
- D. No changes shall be made in the location, dimensions, character or duration of the encroachment as granted by the permit except upon written authorization of the town engineer.
- E. Before issuing an encroachment permit which will affect any water line trench or sewer line trench, the town engineer may require the applicant to obtain the approval of the Chaparral City Water Company and the Fountain Hills Sanitary District, respectively.

Section 16-1-5 Issuance of Permit

Applications for encroachment permits may be approved, conditionally approved or denied. When the town engineer finds that the application is in accordance with the requirements of this article, he shall issue a permit for the encroachment, attaching such conditions as are necessary for the health, safety and welfare of the public and for the protection of the town. If the town engineer finds the application is in conflict with the provisions of this article, the permit shall be denied and the applicant given written reason for the denial. No permit is valid unless signed by the town engineer or his designee.

Section 16-1-6 Assignment

Encroachment permits shall be issued only to the person making application therefore and may not be assigned to another person by the permittee. If any permittee assigns his permit to another, the permit shall be void.

Section 16-1-7 Fees

- A. Permit and inspection fees, in such amounts as approved by the Council by resolution or as part of the Town's annual budget, shall be charged and paid to the Town for each encroachment permit.
- B. If any construction or work is undertaken prior to applying for and securing the required permit, the work shall be terminated until a permit is granted, and the fee shall be one and one-half times the fees listed in subsections A and B of this section.

(09-08, Amended, 07/02/2009)

Section 16-1-8 Insurance; Holding Town Harmless

- A. The permittee shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to work performed by the permittee under the permit, or arising out of the failure on the permittee's part to perform his work under the permit. If any claim of such liability is made against the town, its officers or employees, permittee shall defend, indemnify and hold them harmless from such claim, including claims alleging the negligence of the town, its officers and employees.
- B. No applicant shall be entitled to an encroachment permit unless he shall have filed and maintained on file with the town a certificate certifying that he or his company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the state, insuring the applicant and the town and its agents, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to work performed by the applicant, its agents or employees while performing any work under the permit. Such insurance shall be primary and provide comprehensive general liability coverage, including completed operations coverage, for all liability assumed by the applicant under subsection A of this section, and shall be provided by the permittee in the following minimum amounts: Five hundred thousand dollars combined single limit. The town engineer may require higher insurance coverage for any particular encroachment permit when he deems it appropriate.
- C. Failure by the applicant to provide the town with such a certificate, and failure by the town to demand the filing by permittee of such a certificate before such a permit is issued, shall not be deemed to waive the permittee's obligation to provide the insurance. Such insurance certificate shall remain in effect and be kept on file with the town until all work to be performed by the permittee under the permit has been completed. Where an encroachment involves a permanent obstruction, such insurance certificate requirements shall remain in effect until such obstruction is removed. The insurance certificate shall provide that coverage shall not be canceled or expire without providing thirty days written notice of such action to the town.

Section 16-1-9 Term of Permit

The permittee shall begin the work authorized by a permit issued pursuant to this article within ninety days from date of issuance, unless a different period is stated in the permit. If the work is not so begun, the permit shall become void. The permittee shall complete the work authorized by the permit within the time specified in the permit. Where an encroachment involves a permanent obstruction, other requirements of this article shall remain in effect until the obstruction is removed.

Section 16-1-10 Display

The permittee shall keep the permit at the site of work or in the cab of a vehicle when movement on a public street is involved. A permit issued for a continued use or maintenance of an encroachment may be kept at the place of business of the permittee or otherwise safeguarded during its term. In all cases the permit must be shown to any authorized representative of the town on demand.

Section 16-1-11 Supervision and Inspection of Work

The town engineer may make inspections necessary in connection with the permits issued under this article to insure conformance to this article and the terms of the permit. All work done under such permits shall be to the satisfaction of the town engineer. The permittee shall notify the town engineer twenty-four hours prior to starting work under a permit and shall also notify the town engineer twenty-four hours prior to any backfill being placed in connection with work under the permit. If the permittee fails to give such notification, the town engineer may order the work re-excavated, at the permittee's expense, in order to permit appropriate inspection.

Section 16-1-12 Revocation of Permit

- A. A right-of-way encroachment permit may be revoked by the town when the right-of-way, or any portion thereof, occupied and used by the permittee is needed or required by the town, and upon notice from the town, the permittee shall promptly remove all property belonging to him from the right-of-way.
- B. If at any time the town engineer finds, in writing, that the delay in the completion of the work authorized by the encroachment permit is due to lack of diligence on the part of the permittee, he may cancel the permit and restore the right-of-way or water course to its former condition. All costs and fees for any restoration plus an administrative fee in such amount as approved by the Council by resolution or as part of the Town's annual budget shall be charged to the permittee. If a permittee fails to pay any fees charged in connection with a permit under this article within 15 days of receipt of notice such payment is due, the town engineer may revoke all of the permittee's existing permits and may deny any further permits to the permittee until payment is received for all fees due. The determination of the town engineer shall be final.
- C. Unless specifically modified in the encroachment permit conditions, failure to perform the following shall constitute a lack of diligence on the part of the permittee:
 - 1. Stop the seep or flow of a liquid onto or upon a street within five days of receipt of notice from the town.
 - 2. Provide and maintain required barricading and other necessary traffic control measures, as

determined by the town engineer, for the entire period of the encroachment.

3. Close or backfill an excavated area where no work is occurring for a period of three consecutive days. The town engineer may require the permittee to backfill daily, install plates or take other such actions the engineer deems necessary for traffic safety, access, circulation or proper drainage.
4. Provide a temporary pavement surface (cold patch) within three days after backfilling; adequately maintain the temporary pavement surface and install the permanent pavement surface within thirty days after backfilling.
5. Restore improved landscape areas within seven days after backfilling.
6. Restore native desert areas by plantings, spriggings and seeding within sixty days after backfilling.
7. Remove steel plates within three days after placement on roadways with a posted speed limit of 35 mph or higher. Remove steel plates within twenty days for any other roadway unless such steel plates are installed flush with the top of the surrounding asphalt.

D. Any permit holder that has been determined by the town engineer to have shown a lack of diligence, as set forth in subsection C of this section, two or more times within twelve consecutive months, shall be guilty of a class 1 misdemeanor.

(09-08, Amended, 07/02/2009)

Section 16-1-13 Manner of Giving Notice

All notices required by this article to be given by the permittees to the town shall be given at the office of the town engineer. Any notice to be given to a permittee shall be deemed to have been received by him upon mailing by certified mail to the address shown on the permit, or when it has been referred to in or attached to any permit received by him.

Section 16-1-14 Standards and Specifications

The town engineer may establish such standards and specifications necessary for the proper construction, use and maintenance of encroachments. Any work or use done under a permit issued under provisions of this article shall conform to such standards and specifications. In instances where alteration or modification will be required, the town engineer may issue an advisement letter or a directive pertaining to standards and specifications required for a particular encroachment.

Section 16-1-15 Appeal

Any person aggrieved by the action of the town engineer under this article may appeal such decision to the town manager. The aggrieved person shall file a notice of appeal, in writing, with the town manager within seven days after final action by the town engineer. The town manager may affirm, modify or reverse the action of the town engineer from which the appeal is taken. Any person aggrieved by the decision of the town manager may further appeal such decision to the town council. The aggrieved

person shall file a notice of appeal, in writing, with the town clerk within seven days after final decision by the town manager. The town council may affirm, modify or reverse the action of the town manager for which the appeal is taken.

Section 16-1-16Emergency Work

This article does not prevent any person from making excavations necessary for a preservation of life or property when an urgent necessity therefore arises while the town offices are closed. A person making an emergency use or encroachment on a public street shall apply for a permit therefore within one calendar day after the offices of the town are open.

Section 16-1-17Authority of Council to Prohibit Specific Excavations

- A. The town council may prohibit a specific excavation after a hearing as provided in this section.
- B. Notice of the hearing shall be given by:
 - 1. Mailing a notice to all owners of the property abutting that portion of any street in which excavation is to be prohibited as shown in the latest equalized assessment roll, not less than fourteen days, excluding the day of hearing, prior to the date of the hearing.
 - 2. Publication of a notice in a newspaper of general circulation of not less than ten days, excluding the day of hearing, prior to the date of the hearing.
 - 3. Posting notices along the line of the street at not more than 300 foot intervals on each side of the street not less than ten days, excluding the day of hearing, prior to the date of the hearing.
 - 4. Mailing written notice to all public utility companies, water districts and flood control districts having jurisdiction, not less than fourteen days including the day of hearing, prior to the date of hearing.
- C. The notice shall include:
 - 1. The name of the street.
 - 2. The termini of proposed prohibition of excavation.
 - 3. A description of street improvements to be made.
 - 4. The length of time proposed for prohibition of excavation.
 - 5. A statement as to the necessity of abutting owners completing all anticipated street excavation prior to placement of proposed paving.
 - 6. The proposed commencement date for paving.
 - 7. The date, time and place of public hearing at which the council shall hear objections to the proposed prohibition of excavation.

- D. The council shall hold a public hearing at the time, date and place specified in the notice. At the hearing, the council shall receive and consider the objections from property owners and others having a valid interest in the proposed prohibition of excavation. The council may continue the hearing until another day and hour if it so desires. The hearing shall be held not less than ninety days prior to the proposed date for commencement of work on the improvement.
- E. After closing the hearing, the council may, by resolution, declare a prohibition on excavation within the traveled way for the period specified in the resolution on all or a portion of the proposed improvement. Failure to adopt such resolution within thirty days of the close of the hearing shall be deemed to end the proceedings.

Section 16-1-18Excavations and Newly Paved Streets

- A. No excavation shall be permitted in a newly paved, resurfaced or sealed public street for the following period following completion of such improvement:
 - 1. Construction or reconstruction of a structural section, four years.
 - 2. Surfacing, resurfacing or sealing of an existing structural section, two years.
- B. In the event of an emergency, the above periods may be waived by the town engineer.
- C. Notwithstanding subsection B of this section, any person who causes excavation as prescribed in subsection A of this section shall be subject to a base fee per excavation plus a fee per lineal foot of pavement replacement. The base fee per excavation and fee per lineal foot of pavement replacement described in this subsection shall be in such amounts as approved by the Council by resolution or as part of the Town's annual budget.
- D. These fees may be waived by the town engineer when the excavation is an approved part of a comprehensive proactive, scheduled, rebuild program or an extension of service to areas existing as of 1991 in addition to all other terms and conditions of this article.

(09-08, Amended, 07/02/2009)

Section 16-1-19Compliance With Other Laws

A permittee shall keep himself adequately informed of all state and federal laws and local ordinances and regulations which in any manner affect the permit. The applicant shall at all times comply with and shall cause all his agents and employees to comply with all such laws, ordinances, regulations, decisions, court and similar authoritative orders.

Section 16-1-20Cost of Work

All work authorized by an encroachment permit shall be done at the sole cost and expense of the permittee, and shall be done at such time and in such manner as to cause the least inconvenience to the traveling public and as directed by the town engineer.

Section 16-1-21 Article Not Applicable to Town Work

The provisions of this article shall not be applicable to any work done in any right-of-way or water course under the direction of competent town authority by employees of the town, or by any contractor of the town performing work for and on behalf of the town necessitating openings or excavations in streets.

Section 16-1-22 Liability of Town

This article shall not be construed as imposing upon the town or any official or employee thereof any liability or responsibility for damages to any person injured by performance of any work done pursuant to an encroachment permit issued hereunder; nor shall the town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work done pursuant to such a permit.